

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MONKEYMEDIA, INC.,)	
)	CIVIL ACTION NO. 1:10-cv-00319
Plaintiff,)	
)	
vs.)	JURY TRIAL DEMANDED
)	
APPLE, INC.,)	
)	
Defendant.)	

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

MONKEYmedia, Inc. brings this suit against Apple, Inc. for patent infringement.

I. PARTIES

1. Plaintiff MONKEYmedia, Inc. ("MONKEYmedia") is a Texas corporation with its principal place of business in Austin, Texas.

2. Defendant Apple, Inc. ("Apple") is a corporation organized under the laws of California with its principal place of business at 1 Infinite Loop, Cupertino, California. Apple may be served through its registered agent for service of process, CT Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

II. JURISDICTION AND VENUE

3. Plaintiff MONKEYmedia asserts causes of action under 35 U. S. C. § 271 for infringement of United States Patents owned by MONKEYmedia. This Court has original and exclusive subject matter jurisdiction over these claims under 28 U. S. C. §§ 1331 and 1338(a). Defendant Apple is subject to personal jurisdiction, because Apple has transacted business in this

state, contracted to supply services or products in this state, and caused tortious injury in this state.

4. Venue is proper in this Court under 28 U. S. C. §§ 1391(b) and (c) and 1400(b). Defendant Apple conducts business within this district. Additionally, events giving rise to this suit occurred in this district, including acts of infringement by Apple.

III. FACTUAL BACKGROUND

A. MONKEYmedia

5. Eric Gould Bear, the founder of MONKEYmedia, is a prolific inventor and is named as the first inventor in over 100 patents and patent applications. These include the issued patents and pending patent applications in the "Seamless Contraction" patent family. The claims in the Seamless Contraction patents that are relevant to Apple's infringement at issue concern the summarization and/or variable display of text and audio-visual content, based on the saliency of the content. MONKEYmedia is the owner by assignment of all right, title and interest in and to the Seamless Contraction Patents.

i) The '938 Patent

6. U. S. Patent No. 6,177,938 ('938) owned by MONKEYmedia is directed towards a computer user interface with non-saliency de-emphasis. The inventions claimed in the '938 patent have special significance for computer systems that have the capability to control the display of different versions of the same text and/or audiovisual content, depending on selected parameters. For example, the inventions give computer systems the ability to display a "long" version of the content when a particular parameter is selected and display a "shorter" version of

the content, or perhaps a summary of the content, if a different parameter is selected. The '938 Patent issued on January 23, 2001 and has a priority date of December 14, 1992.

ii) The '052 Patent

7. U. S. Patent No. 6,219,052 ('052) owned by MONKEYmedia is directed towards a computer user interface with non-salience de-emphasis. The inventions claimed in the '052 patent also have special significance for computer systems that have the capability to control the display of different versions of the same text and/or audiovisual content, depending on selected parameters. The '052 Patent issued on April 17, 2001 and has a priority date of December 14, 1992.

iii) The '730 Patent

8. U. S. Patent No. 6,335,730 ('730) owned by MONKEYmedia is also directed towards a computer user interface with non-salience de-emphasis. The inventions claimed in the '730 patent have special significance for computer systems that have the capability to control the display of different versions of the same text and/or audiovisual content, depending on selected parameters. The '730 Patent issued on January 1, 2002 and has a priority date of December 14, 1992.

B. Apple's Infringing Products

9. Apple is a designer and manufacturer of computer technologies including personal computers, mobile communication devices, media authoring tools, portable digital music and video players and related software. Apple makes, distributes, and sells computer systems as defined in the '938, '052 and '730 patents, including Apple's iMac, Mac Pro, Mac Mini, MacBook, MacBook Pro, and MacBook Air (The "Macintosh Computers") that have a

service application in the Mac OS X operating system called "Summary Service". This application is found under the "Services" menu, and can be used in connection with most programs involving the creation and/or display of text documents. The Summary Service application allows the user to automatically summarize selected text in many different programs and also gives the user the ability to adjust the length of the summary on the fly by using a "Summary Size" slider. The user can also choose to display the summaries in either paragraph or sentence mode. According to Apple, "You wouldn't expect a computer to be able to analyze some text and provide a good summary but Summary Service is surprisingly good. Try it!"

10. Apple also makes, distributes, and sells computer systems that have an application in the Mac OS X "Snow Leopard" operating system called "Preview", which "offers a full-featured PDF viewing experience complete with searching and annotation capabilities." According to Apple, "Spotlight technology makes it easy to find what you're looking for. Type in a word or phrase, and Preview instantly returns the results in an easy-to-use list." When viewing "thumbnails" of pages of a document, only thumbnails of pages that contain the search term(s) are displayed.

11. Apple also makes and distributes a very popular web browser program called Safari. The latest version of Safari 4 is touted by Apple to be the "world's fastest and most innovative web browser," and is used by millions of users. Upon information and belief, beginning with its release of Safari 2 in or around 2005 and continuing thereafter, Apple has incorporated the Safari web browser with a built-in RSS reader into all Macintosh computers that it makes, distributes, and sells. An RSS reader is an application that allows a user to aggregate multiple web feeds and read them in a single user interface. While there are many different RSS Readers on the market, the Safari RSS Reader contains relatively unique features, such as an

“Article Length” slider, which gives the user the ability to shrink the articles in the RSS feed and adjust the displayed length of the article information on the fly. The versions of the Safari web browser containing the Article Length slider are referred to herein as the “Infringing Safari Web Browser”. Apple also distributes the Infringing Safari Web Browser as a “stand alone” program for download to Apple computers, as well as to computer systems that do not have the Mac OS X operating system, such as computer systems that use operating systems from Microsoft. On June 12, 2009 Apple announced, “more than 11 million copies of Safari 4 have been downloaded in the first three days of its release, including more than six million downloads of Safari for Windows.”

12. Apple also makes, distributes, and sells Macintosh computers that have an application in the OS X Operating System called “DVD Player”. This application is used to play audiovisual content from DVD-Video discs in the Optical Disc Drive that is incorporated into the Apple computer systems. Apple invites customers to “Enjoy a front-row seat for everything from the latest action thriller to your latest family vacation — with dramatic sound and high-definition video — all from DVD Player on your Mac.” DVD Player is capable of playing longer and shorter versions of a movie that are stored on a single disc, such as a director’s cut and theatrical version, which does not play certain scenes from the director’s cut.

13. In addition, in or around October 2005, Apple began making, distributing, and selling Macintosh computers with media center software called “Front Row”. “Front Row” can be used as an alternative to the “DVD Player” application to play audiovisual content from DVD-Video discs that are inserted into the Optical Disc Drive and also play audiovisual content that is stored on the hard drive of the Macintosh computer. According to Apple, “Front Row transforms an evening at home into a blockbuster Hollywood premiere.”

C. Apple's Knowledge of its Infringement

14. Long before MONKEYmedia filed this lawsuit, Apple had actual knowledge that Eric Gould Bear had conceived and reduced to practice inventions relating to summarization and/or variable display of text and audio-visual content, based on the saliency of the content. Moreover, MONKEYmedia repeatedly provided information to Apple about MONKEYmedia's patents before filing this lawsuit. Despite having this actual knowledge of the patents at issue, Apple manufactured, sold or otherwise distributed, and continues to manufacture, sell or otherwise distribute infringing systems.

IV. CAUSES OF ACTION

A. Infringement of the '938 Patent

15. MONKEYmedia reincorporates by reference and realleges paragraphs 1 through 13 above as if fully set forth herein.

16. Apple has, without authority, consent, right, or license, and in direct infringement of the '938 patent in violation of 35 U. S. C. § 271(a), made, used, offered for sale, and sold in this country the systems claimed in the '938 Patent. Specifically, the computer systems manufactured, sold and offered for sale by Apple with the "Summary Service" feature infringe the '938 Patent because the systems satisfy each limitation of at least claims 1 and 3 of the '938 Patent. Moreover, the computer systems manufactured, sold and offered for sale by Apple that include the Infringing Safari Web Browser separately infringe at least claims 1 and 3 of the '938 Patent in violation of 35 U. S. C. § 271(a).

17. In addition, Apple has, in this country, actively induced its customers to directly infringe claims 1 and 3 of the '938 Patent by encouraging such customers to use Apple's

computer systems with the Summary Service feature and Infringing Safari Web Browser, and by encouraging its customers to download the Infringing Safari Web Browser and use the Infringing Safari Web Browser in connection with their “non-Apple” computer systems. This conduct constitutes infringement under 35 U. S. C. § 271(b).

18. Apple has also sold and offered for sale, or otherwise distributed in the United States, features or applications incorporated in the Mac OS X operating system and in the Infringing Safari Web Browser that are components of the systems claimed by claims 1 and/or 3 of the ‘938 patent, knowing that such features are especially made and adapted for use in infringing the ‘938 patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. The end users directly infringe claims 1 and/or 3 of the ‘938 Patent by using the Apple computer systems with these features or applications and/or by installing the Infringing Safari Web Browser for use on their “non-Apple” computer systems. This conduct constitutes contributory infringement under 35 U. S. C. § 271(c).

19. As a result of Apple’s infringement of the ‘938 Patent, MONKEYmedia has been damaged, and will continue to be damaged unless Apple is enjoined by this Court. Upon information and belief, Apple’s infringement of the ‘938 patent is willful, and makes this lawsuit an exceptional case under 35 U. S. C. § 285.

B. Infringement of the ‘052 Patent

20. MONKEYmedia reincorporates by reference and realleges paragraphs 1 through 13 above as if fully set forth herein.

21. Apple has, without authority, consent, right, or license, and in direct infringement of the ‘052 patent in violation of 35 U. S. C. § 271(a), made, used, offered for sale, and sold in this country the systems claimed in the ‘052 Patent. Specifically, the computer systems

manufactured, sold and offered for sale by Apple with the “Summary Service” feature infringe the ‘052 Patent because the systems satisfy each limitation of at least claim 2 of the ‘052 Patent. Moreover, the computer systems manufactured, sold and offered for sale by Apple that include the Infringing Safari Web Browser separately infringe at least claim 2 of the ‘052 Patent in violation of 35 U. S. C. § 271(a).

22. In addition, Apple has, in this country, actively induced its customers to directly infringe claim 2 of the ‘052 Patent by encouraging such customers to use Apple’s computer systems with the Summary Service feature and Infringing Safari Web Browser, and by encouraging its customers to download the Infringing Safari Web Browser and use the Infringing Safari Web Browser in connection with their “non-Apple” computer systems. This conduct constitutes infringement under 35 U. S. C. § 271(b).

23. Apple has also sold and offered for sale, or otherwise distributed in the United States, features or applications incorporated in the Mac OS X operating system and in the Infringing Safari Web Browser that are components of the systems claimed by claim 2 of the ‘052 patent, knowing that such features are especially made and adapted for use in infringing the ‘052 patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. The end users directly infringe claim 2 of the ‘052 Patent by using the Apple computer systems with these features or applications and/or by installing the Infringing Safari Web Browser for use on their “non-Apple” computer systems. This conduct constitutes contributory infringement under 35 U. S. C. § 271(c).

24. As a result of Apple’s infringement of the ‘052 Patent, MONKEYmedia has been damaged, and will continue to be damaged unless Apple is enjoined by this Court. Upon

information and belief, Apple's infringement of the '052 patent is willful, and makes this lawsuit an exceptional case under 35 U. S. C. § 285.

C. Infringement of the '730 Patent

25. MONKEYmedia reincorporates by reference and realleges paragraphs 1 through 13 above as if fully set forth herein.

26. Apple has, without authority, consent, right, or license, and in direct infringement of the '730 patent in violation of 35 U. S. C. § 271(a), made, used, offered for sale, and sold in this country the systems claimed in the '730 Patent. Specifically, the computer systems manufactured, sold and offered for sale by Apple with the "Summary Service" service application infringe the '730 Patent because the systems satisfy each limitation of at least claims 1 and 6 of the '730 Patent. In addition, computer systems manufactured, sold and offered for sale by Apple with the OS X "Snow Leopard" operating system infringe the '730 Patent because the systems include the "Preview" application and satisfy each limitation of at least claims 1 and 6 of the '730 Patent. The computer systems manufactured, sold and offered for sale by Apple that include the Infringing Safari Web Browser separately infringe at least claims 1 and 6 of the '730 Patent in violation of 35 U. S. C. § 271(a). In addition, the computer systems manufactured, sold and offered for sale by Apple that include the "DVD Player" application and/or the "Front Row" application (either factory-installed or user-installed) separately infringe at least claim 6 of the '730 Patent in violation of 35 U. S. C. § 271(a).

27. In addition, Apple has, in this country, actively induced end users to directly infringe claims 1 and 6 of the '730 Patent by encouraging such customers to use Apple's computer systems with the Summary Service service application, the Preview application and the Infringing Safari Web Browser, and by encouraging its customers to download the Infringing

Safari Web Browser and use the Infringing Safari Web Browser in connection with their “non-Apple” computer systems. Apple also has, in this country, actively induced end users to directly infringe claim 6 of the ‘730 Patent by encouraging such customers to use Apple’s computer systems with the “DVD Player” application and/or the “Front Row” application. This conduct constitutes infringement under 35 U. S. C. § 271(b).

28. Apple has also sold and offered for sale, or otherwise distributed in the United States, features or applications incorporated in the Mac OS X operating system and in the Infringing Safari Web Browser that are components of the systems claimed by claims 1 and/or 6 of the ‘730 patent, knowing that such features are especially made and adapted for use in infringing the ‘730 patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. The end users directly infringe claims 1 and/or 6 of the ‘730 Patent by using the Apple computer systems with these features or applications and/or by installing the Infringing Safari Web Browser for use on their “non-Apple” computer systems. This conduct constitutes contributory infringement under 35 U. S. C. § 271(c).

29. As a result of Apple’s infringement of the ‘730 Patent, MONKEYmedia has been damaged, and will continue to be damaged unless Apple is enjoined by this Court. Upon information and belief, Apple’s infringement of the ‘730 patent is willful, and makes this lawsuit an exceptional case under 35 U. S. C. § 285.

V. JURY DEMAND

30. MONKEYmedia demands a trial by jury on all issues.

VI. PRAYER

WHEREFORE, MONKEYmedia respectfully requests the following relief:

(a) That this Court find Apple has committed acts of patent infringement in violation of the Patent Act, 35 U. S. C. § 271;

(b) That this Court enter judgment that:

(i) MONKEYmedia is the owner of the MONKEYmedia '938, '052 and '730 Patents and all rights of recovery thereunder;

(ii) the MONKEYmedia '938, 052 and '730 Patents are valid and enforceable; and

(iii) Apple has willfully infringed the MONKEYmedia '938, 052 and '730 Patents;

(c) That, after trial, this Court enter an injunction enjoining Apple, its officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with them, from continuing the acts herein complained of, and more particularly, that Apple and such other persons be permanently enjoined and restrained from further infringing the MONKEYmedia '938, 052 and '730 Patents in connection with the accused products;

(d) That this Court require Apple to file with this Court, within thirty (30) days after the entry of final judgment, a written statement under oath setting forth in detail the manner in which Apple has complied with the injunction;

(e) That the Court award MONKEYmedia damages of no less than a reasonable royalty that have been incurred as a result of Apple's patent infringement, with both pre-judgment and post-judgment interest;

(f) That Apple's infringement of the MONKEYmedia '938, 052 and '730 Patents be judged willful and that the damages to MONKEYmedia be increased pursuant to 35 U. S. C. § 284 by three times the amount found or assessed;

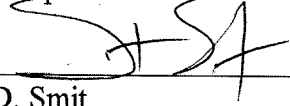
(g) That this case be judged an exceptional case and MONKEYmedia be awarded its attorneys' fees in this action pursuant to 35 U. S. C. § 285;

(h) That this Court award MONKEYmedia its costs and disbursements in this action; and

(i) That this Court grant MONKEYmedia all further relief to which it may be entitled.

Respectfully submitted,
GRAVES, DOUGHERTY, HEARON & MOODY
A Professional Corporation
401 Congress Avenue, Suite 2200, P. O. Box 98
Austin, Texas 78701
512-480-5600 Telephone/512-480-5853 Telecopier

By: _____


Steven D. Smit
State Bar ID No. 18527500
William G. Christian
State Bar ID No. 00793505
Matthew C. Powers
State Bar ID No. 24046650

ATTORNEYS FOR PLAINTIFF
MONKEYMEDIA, INC.